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HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1228th MEETING

Held at Headquarters, New York,
on Tuesday, 6 April 1993, at 10 a.m.

Chairman: Mr. ANDO

later: Mr. EL-SHAFEI
(Vice-Chairman)

later: Mr. ANDO (Chairman)

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The meeting was called to order at 10.20 a.m.

ACTION TAKEN BY THE GENERAL ASSEMBLY AT ITS FORTY-SEVENTH SESSION

(a) ANNUAL REPORT SUBMITTED BY THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 45 OF THE COVENENT

(b) EFFECTIVE IMPLEMENTATION OF UNITED NATIONS INSTRUMENTS ON HUMAN RIGHTS AND EFFECTIVE FUNCTIONING OF BODIES ESTABLISHED PURSUANT TO SUCH INSTRUMENTS

PREPARATORY ACTIVITIES RELATING TO THE WORLD CONFERENCE ON HUMAN RIGHTS

1. Mr. AGUILAR, speaking as Chairman/Rapporteur of the Working Group on Article 40 of the Covenant and reporting on the action taken by the General Assembly at its forty-seventh session, said that the Third Committee had taken note of the report submitted by the Human Rights Committee, but had deferred the adoption of a resolution on the Committee's work until its forty-eighth session.

2. Under agenda item 97 (a), the Third Committee had, at its 40th, 42nd to 45th, 48th, 49th and 52nd meetings, considered issues relating to the implementation of human rights instruments and the functioning of human rights treaty bodies. Delegations had welcomed the recommendations in the report on the fourth meeting of persons chairing the human rights treaty bodies (A/47/628), particularly those calling for improved coordination between the treaty bodies and more effective integration of human rights concerns into the overall range of United Nations activities. The Third Committee had favoured finding new ways of monitoring the human rights situation around the world, such as the establishment of an international human rights court with compulsory jurisdiction; the involvement of treaty bodies in early-warning activities and preventive diplomacy, particularly in cases of massive human rights violations; and the participation of their members in fact-finding missions to assist the Security Council or the Secretary-General in identifying possible areas of future conflicts. It had felt that newly independent States, especially successors to former States parties to human rights instruments, should be urged to make the necessary official notifications so that the treaty provisions would continue to apply, and that they should, in any case, be considered as inheriting the obligations arising from those instruments.

3. The number, nature and scope of reservations to human rights instruments had been considered an impediment to the universality of the treaty system, and the conclusions of the meeting of chairpersons in that regard had been endorsed.

4. Many delegations had emphasized the need to strengthen the Centre for Human Rights in order to improve the functioning of the treaty bodies. They had also considered that collaboration among the treaty bodies could facilitate their work and make concerted action possible. On the question of the late submission of reports by States parties, it had been felt that all the treaty bodies should adopt the practice followed by the Committee on the Elimination of Racial Discrimination (CERD) of proceeding with the examination of the situation in countries whose reports were long overdue on the basis of existing information.

(Mr. Aguilar)

5. The Human Rights Committee had been commended for its innovative work, in particular its decision to adopt concluding comments by the Committee as a whole on the reports of States parties, and its practice of calling for urgent reports as a way of monitoring particularly serious situations, a practice which it had been felt the other treaty bodies should emulate. The Third Committee, which had commended the Committee's practice of drafting general comments had welcomed its general comments on articles 7 and 10 of the Covenant and suggested that it should draft comments on article 27.

6. In resolution 47/111, the General Assembly had endorsed the conclusions and recommendations of the meetings of chairpersons aimed at improving reporting procedures and the continuing efforts in that connection by the treaty bodies and the Secretary-General (para. 1); requested an updating of the study by the independent expert on long-term approaches to enhancing the effective operation of the treaty bodies (A/44/668) and the presentation of an interim report to the World Conference on Human Rights in June 1993 (para. 2); and endorsed the amendments to the funding provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, requesting the Secretary-General to provide for the financing of the relevant committees from the regular budget (para. 9).

7. Reporting on the action taken by the Commission on Human Rights at its forty-ninth session, which paralleled the action taken by the General Assembly, he said that the Commission, under its agenda item 17, on the International Covenants on Human Rights, had suggested that reports by the treaty bodies should include an assessment of emerging trends and obstacles affecting adherence to the Covenants; and that, under Article 64 of the Charter, States could be invited to report on unratified conventions. The Commission had, in particular, commended the Human Rights Committee for its examination on short notice of reports from States which had been part of the former Yugoslavia; and had welcomed its new practice of adopting written concluding comments on the reports of States parties.

8. Under its agenda item 18, on the effective functioning of human rights treaty bodies, and in response to the report of the fourth meeting of chairpersons, the Commission had observed that the alarming extent of reservations to the various treaties made it necessary to challenge the admissibility of some of them, and had suggested that advisory opinions might be requested from the International Court of Justice. It had felt that the very late submission, or the non-submission, of reports by States parties should not be tolerated, and had recommended that reports should be written with a thematic rather than an article-by-article approach. It believed that the Manual on Reporting should be given a more practical format and be made available in all the official languages; and that the adoption by all Committees of uniform practices and standard terminology would facilitate the reporting process. The Commission had stressed in general terms the importance of providing the Centre for Human Rights with resources commensurate with its tasks. It had agreed that the Secretary-General and the human rights treaty bodies should explore ways to bring serious human rights situations to the attention of the Security Council.

(Mr. Aquilar)

Lastly, it had felt that the existing treaty bodies should be entrusted with the supervision of any new human rights treaties.

9. Mr. El-Shafei, Vice-Chairman, took the Chair.

10. Mr. POCAR, reporting on some of the issues dealt with at the fourth meeting of persons chairing the human rights treaty bodies, which he, as Chairman, had attended in Geneva in October 1992, observed that the report of that meeting (A/47/628) had served as the basis for much of the action taken by both the Third Committee and the Commission on Human Rights.

11. With regard to the development of effective responses in emergency situations, the chairpersons had taken note of the Yugoslav crisis and had supported the Secretary-General's proposal in his report on the work of the Organization (A/47/1, para. 101) that ways should be explored of empowering the Secretary-General and expert human rights bodies to bring massive violations of human rights to the attention of the Security Council, together with recommendations for action. The Human Rights Committee must now consider whether it wished to pursue that proposal. In any case, the comments it had adopted at its forty-sixth session concerning the urgent reports of the successor States to the former Yugoslavia had been submitted to the Third Committee of the General Assembly as a conference room paper to supplement the reports of the Special Rapporteur.

12. He noted that CERD had adopted views on measures to be taken with regard to the consideration of massive violations of human rights. It had taken a decision at its March 1993 session whereby it could ask States parties to submit special reports urgently; it could then designate a special rapporteur to act as a focal point for monitoring critical situations. Its views and expressions of concern would be submitted for action to the State party, the Secretary-General, early warning mechanisms and all other human rights bodies dealing with similar questions.

13. He drew attention to General Assembly resolution 47/120 entitled "An agenda for peace: preventive diplomacy and related matters". That resolution emphasized the need for all organs and bodies of the United Nations, as appropriate, to intensify their efforts to strengthen the Organization's role in preventive diplomacy, peacemaking, peace-keeping and peace-building, and to continue the discussion of the Secretary-General's report with a view to adequate action being taken. He further drew attention to paragraph 44 of document A/47/628 concerning the views expressed with regard to preventive action.

14. At its session held in January 1993, the Committee on the Elimination of Discrimination Against Women (CEDAW) had contacted the Special Rapporteur of the General Assembly regarding the situation of women in the successor States to the former Yugoslavia. The chairperson of that Committee had asked those States for exceptional reports to be considered at its next session, along the lines of the action taken by the Human Rights Committee.

(Mr. Pocar)

15. At their fourth meeting, the chairpersons had addressed financing issues and stated, in a general way, that the funding for the Centre for Human Rights was grossly inadequate and that each treaty body required proper funding.

16. The problem of extensive reservations to the human rights instruments had been dealt with at length by the chairpersons, who had suggested that the treaty bodies might consider requesting advisory opinions from the International Court of Justice, and also that an analytical study on the whole issue could be prepared either by an independent expert or by the Subcommission on Prevention of Discrimination and Protection of Minorities.

17. The chairpersons had agreed with the Human Rights Committee on the issue of succession in relation to human rights obligations and had been the first to address it in their report (para. 66); that had led to the adoption by the Commission on Human Rights of resolution 93/23.

18. With regard to the rationalization of the reporting procedures, the chairpersons had underscored an idea put forward by the Committee against Torture, regarding the possibility of merging the various treaty body reports into one and, in fact, merging the treaty bodies themselves. He himself had made the point that it was not realistic to take up that suggestion at the meeting of chairpersons but that it could be considered within the framework of the World Conference on Human Rights.

19. The chairpersons had felt that all treaty bodies should be serviced by the same secretariat, namely, the Centre for Human Rights, although their sessions could, of course, be held at different venues. At the moment, CEDAW had a separate secretariat in Vienna.

20. During the course of the meeting of chairpersons, the Chairman of the Third Committee had, before the consideration of some items, held informal round-table discussions with some of the experts; he himself, Mrs. Higgins and an International Labour Organisation expert had had fruitful discussions with him on items relevant to the work of the Human Rights Committee.

21. In connection with the World Conference on Human Rights, the chairpersons had not recommended specific action with regard to the substance of the Conference since they had met at a time when it was unclear whether the Conference would, indeed, take place. The third session of the Preparatory Committee had been unable to agree on an agenda, which finally had been decided upon by the General Assembly (resolution 47/122, annex). The chairpersons had decided that it would be inappropriate to add anything to the agenda at that point, but they had suggested that the treaty bodies should participate fully in the World Conference and that the General Assembly should recommend that the group of chairpersons should be constituted as a special advisory body to the World Conference (A/47/628, para. 77), otherwise, it would simply have observer status. As far as he knew, the General Assembly had not followed that recommendation. The chairpersons had also suggested that a special working group should be established at the World Conference to examine issues relevant to the monitoring bodies (para. 78) and that a meeting of chairpersons and

(Mr. Pocar)

representatives of the principal regional and other human rights organizations should be held within the framework of the Conference (para. 80).

22. Mr. Ando resumed the Chair.

23. The CHAIRMAN, responding to a query by Miss Evatt, said that the section of the Committee's annual report relating to action by the General Assembly always contained an endorsement of pertinent principles or decisions taken by other bodies in order to give greater weight to such recommendations, and that the Committee would be endorsing the work of the meeting of chairpersons.

24. Mrs. CHANET said that a member of CERD, a body which was currently overwhelmed by international emergencies involving racial discrimination, had called her attention to a text which that Committee had adopted in March 1993, suggesting innovative measures for dealing with human rights emergencies. It would be useful to obtain a copy of that document for consideration.

25. Mr. HERNDL observed that it was very important to establish a coordinated, practical approach by which the human rights bodies in general and the treaty bodies in particular could refer massive human rights violations to the Security Council for consideration or action. One way would be to draw the Secretary-General's attention to the matter, through a letter from the chairman of the treaty body concerned; the Secretary-General could then either circulate it as a Security Council document or take the matter up directly with the Council. Another approach could be to seize the General Assembly of the matter by submitting a separate special report on urgent human rights crises, as had occurred in November 1992 in the case of the States which had formerly formed part of Yugoslavia. The Human Rights Committee had adopted views on the matter, but, under the current system, they would not appear in writing until its next annual report was issued.

26. The submission of reports by States parties must be expedited, but, in his view, the Committee could not discuss the situation in a particular country in the absence of such a report. Unlike the Commission on Human Rights, which was a political body, the Committee was empowered under article 40 of the Covenant only to consider reports submitted by States parties. More pressure could be placed on States parties to submit their reports in a timely fashion if delinquent States were singled out each year in a General Assembly resolution addressed to specific countries. That would be more effective than the current practice of including reporting obligations in a general resolution on the implementation of human rights instruments.

27. In resolution 47/111, the General Assembly had endorsed all the recommendations aimed at streamlining, rationalizing and otherwise improving reporting procedures contained in the report of the fourth meeting of persons chairing the human rights treaty bodies (A/47/628, para. 1) and requested the Secretary-General to submit a report examining those conclusions and recommendations, in the light of the views expressed at the forty-ninth session of the Commission on Human Rights and the thirty-seventh session of the Commission on the Status of Women (para. 11).

(Mr. Herndl)

28. The Committee should formulate concise and specific recommendations for the World Conference on Human Rights for consideration at the forthcoming meeting of the Preparatory Committee and incorporation into the report of the World Conference. The recommendations contained in the report of the fourth meeting of chairpersons should also be incorporated into that report. The Economic and Social Council, the General Assembly or the World Conference might perhaps be used as a forum to promote the idea of requesting advisory opinions from the International Court of Justice on reservations to international human rights treaties.

29. The General Assembly had appealed directly to the Secretary-General to strengthen the servicing of treaty bodies, but no action had yet been taken. It was important to reinforce the Centre for Human Rights in terms of both financing and personnel.

30. Mrs. EVATT, referring to paragraphs 62 to 65 of document A/47/628, suggested that a working group of the Human Rights Committee might undertake a preliminary study of inconsistencies in the reservations made to the principal treaties by States parties, which could add to the study proposed in paragraph 62.

31. The advisory services and technical assistance discussed in paragraphs 75 and 76 dealt mainly with training in the preparation of reports. Training of law enforcement officers would be a way to ensure greater human rights protection, and more resources should be allocated for training in that area.

32. Mrs. HIGGINS said that the Committee should think very carefully about any proposals to report to the Security Council, the Secretary-General or the General Assembly. A controversial political debate was currently under way within the Organization about the competence of the Security Council to recommend measures under Chapter VII of the Charter in cases where massive violations of humanitarian law had occurred, and the suggestion that the Committee should report its findings to the Security Council presupposed the outcome of that debate. Certainly, members wanted the Committee to be effective and engaged, but it should preserve its independent status as a treaty body and should keep United Nations political organs at arm's length. While the Committee should make certain that its views on matters within its competence were transmitted to the appropriate body, reporting massive human rights violations to the Security Council fell outside its competence. A more objective review of human rights fulfilled a useful function, in that countries which were not in line with the prevailing political opinion could still have confidence that they would receive an objective hearing in the Committee.

33. She strongly opposed requesting advisory opinions from the International Court of Justice regarding reservations. The Court had already given its answer to that question in relation to the Convention on the Prevention and Punishment of the Crime of Genocide, and the same principles should be applied to each reservation made to all human rights treaties. A better approach would be for the Committee to put forward its own views in general comments.

34. She was disturbed that the Committee's input into the preparations for the World Conference on Human Rights had thus far been limited because its

(Mrs. Higgins)

representatives had not been given expert status. Because of the short time remaining before the Conference, the Committee could only entrust its representatives with the task of putting forward its views, combining the recommendations in the chairpersons' report and the study by Mr. Philip Alston on possible long-term approaches to enhancing the effective operation of the human rights treaty bodies (A/44/668).

35. States parties must be made aware of the realities of participation in the Covenant. A list should be issued of those whose submissions were late, who had not replied to communications, had declined to meet the Committee's requests or had not complied with procedures under the Optional Protocol, and that list should be made available to the press.

36. She believed that, following its initiative with regard to the former Yugoslavia and on the basis of its conviction that international law provided for State succession to human rights obligations, the Committee should contact all States in legal positions similar to those of Bosnia and Herzegovina and Croatia, such as the successor States to the Union of Soviet Socialist Republics. Some of those States had declared their succession to the obligations of the former USSR under the Covenant but others remained silent and should be reminded of their obligations.

37. In addition, the Committee must consider what measures it could take between sessions to deal with emergencies: in particular, whether members should be dispatched to States parties to discuss problems that arose. She hoped that the Working Group on article 40 would take up those issues at its next meeting, and that the Committee would reach a decision on the reservations issue at the current session.

38. Mr. LALLAH said that, of the three suggested means of dealing with reservations, namely, seeking an advisory opinion from the International Court of Justice (ICJ), preparing a study on the matter, and drafting a general comment, he favoured the last, since the Committee should make its own interpretation. In any event, it had already decided to prepare a general comment.

39. With regard to developing a special relationship with the Security Council, he pointed out that the Committee had always been very careful to remain within its own competence under the Covenant. Perhaps the time had come for the Committee to build on its past experience and undertake initiatives that States parties might not have expected when acceding to the Covenant. As it was both important and appropriate to keep the organs of the United Nations fully informed of the Committee's work, he suggested that the Director of the Centre for Human Rights could convey to the Security Council any information relevant to its own tasks.

40. Mr. SADI said that, in his view, too, it was important for the Committee to build on its existing strength and to enhance its working methods. He therefore favoured the submission of special or emergency reports to the General Assembly and the Security Council; the subsequent fate of those reports was of no concern to the Committee. The Security Council was the only body capable of effective action to address grave violations of human rights and its assistance should

(Mr. Sadi)

therefore be engaged by the Committee, which was, regrettably, rather impotent, even in regard to States parties to the Covenant.

41. Within the United Nations system there was increasing pressure to seek an advisory opinion on the issue of reservations. While the Committee should also develop its own views on that issue, he felt that such an opinion should be sought, particularly in the context of the forthcoming World Conference.

42. It was unfortunate that, owing to time constraints, the Committee was forced to rush through many issues, thus prejudicing the quality of its work. No judicial tribunal could make decisions in the short time given to the Committee to formulate its views and he felt, therefore, that the quality of the Committee's work would be considerably enhanced if its sessions were extended or if an additional session could be held.

43. In his introductory statement at the beginning of the session, the representative of the Secretary-General had described a new procedure followed by the Committee on Economic, Social and Cultural Rights for the conduct of field examinations and had suggested that the Committee might emulate that initiative. In the interests of enhancing its work, he felt that the Committee should give careful consideration to the adoption of a similar procedure.

44. Mr. AGUILAR said, with reference to the last suggestion by Mr. Sadi, that the Committee should address the problem of deficient reports, not necessarily through field examinations, but by assisting States parties with the preparation of those reports. He noted that the experience of the Committee on Economic, Social and Cultural Rights in the conduct of field examinations had not been encouraging: some countries had refused visits by its members. Urgent measures were required, however, to resolve the problem of late and deficient reports and he therefore endorsed the suggestion by Mrs. Higgins that lists of those countries which were in default of their commitments should be published. Alternatively, reports which were very deficient, such as that submitted at the current session by the Dominican Republic, could be returned to the State party concerned with an indication of what the Committee needed to know and of the format required.

45. With regard to reservations, he inclined to the same view as Mrs. Higgins, particularly since the Committee had already adopted a decision to prepare a general comment on reservations. That would not, however, preclude it from seeking an advisory opinion from the International Court of Justice, but he was doubtful whether the Court would have such an opinion in time for the World Conference or whether the World Conference would be able to take up the matter in a competent manner.

46. With regard to the question of the succession to human rights obligations of the States of the former USSR, he agreed that the Committee should apply the experience it had gained with the successor States to the former Yugoslavia and should approach those States of the former USSR where there were particularly acute human rights problems, such as Armenia, Azerbaijan and Georgia, and request reports for the Committee's consideration at its next session.

47. Mr. PRADO VALLEJO agreed that the Committee should explore new initiatives with a view to rendering its implementation of the Covenant more effective. In particular, it could strengthen the guidance it gave to States parties to enable them to meet their deadlines in the submission of reports and to comply more fully with the Committee's requirements. The practice of the Committee on the Elimination of Racial Discrimination (CERD), in investigating alleged violations of rights before it received a report, was a useful innovation which the Committee might emulate.

48. With regard to the backlog in communications, he suspected that individuals in many countries were deterred from submitting complaints to the Committee not only by ignorance of the Optional Protocol, but also by delays in the Committee's handling of communications, which sometimes took as long as four to five years. There was, consequently, a need for a special session on communications to clear the backlog and to expedite those matters which were most urgent and important.

49. He fully supported the suggested use of mechanisms offered by the Security Council to deal with massive violations of human rights, since such violations posed a direct threat to peace and security throughout the world.

50. In general, it was not sufficient to address human rights violations after they had occurred: the Committee must find ways to prevent their occurrence, as had been stated in the General Assembly and by the Preparatory Committee for the World Conference on Human Rights. One method would be for the Committee to request prompt, additional reports from States in which particularly complex situations had developed that were likely to produce human rights violations. The Committee could include in its comments a standard applicable to political situations which might hamper the safeguarding of human rights, such as the amnesties which had been declared in several Latin American countries. In addition, it was sometimes apparent from State party reports that in a given country there was no remedy for violations: in such cases the Committee should act promptly, to avert possible violations.

51. In his view, reservations in general were inconsistent with the aims and purposes of the Covenant and an approach should therefore be made to the International Court of Justice to ascertain what steps could be taken with regard to reservations which the Committee considered inadmissible. At the same time, the Committee should formulate its own views on such reservations before approaching the Court.

52. Mrs. CHANET agreed with the suggestion by Mrs. Higgins that the Committee should publish a list of States which were late submitting reports or had failed to cooperate with its recommendations on communications.

53. With regard to the question of reservations, she believed that it was the Committee's duty to make its own views known and she therefore favoured the preparation of a general comment. She also agreed on the need for a special extended session devoted to clearing the backlog of communications, since it was unacceptable to make people wait several years for the Committee to act.

(Mrs. Chanet)

54. Finally, in dealing with emergencies, she believed the Committee should give careful consideration to the procedure adopted by the Committee on the Elimination of Racial Discrimination and requested further information regarding that initiative.

55. Mrs. KLEIN (Secretary of the Committee) drew attention to a working paper by the Committee on the Elimination of Racial Discrimination, (CERD/C/1993/Misc.1/Rev.2), setting forward ideas regarding early warning and urgent procedures. Such measures included the establishment of a follow-up mechanism to the recommendations in the concluding observations of that Committee; sending one or more of its members to States parties to facilitate the implementation of international standards; submitting information to the Secretary-General as a contribution to the early-warning mechanism to be established pursuant to General Assembly resolution 47/120, section II (1); drawing upon Committee members as a resource in the relevant activities of the Centre for Human Rights; designating a special rapporteur to act as a focal point for monitoring critical situations and, in consultation with the Chairman of the Committee, initiating the urgent action procedure whenever necessary; expressing its concern about the human rights situation in a given country to the State party concerned or to the Special Rapporteur; and, finally, notifying the Secretary-General of any matters of particular importance which should be brought to the attention of the Security Council. The Committee on the Elimination of Racial Discrimination intended to give careful consideration to those ideas at its next session.

56. Mr. EL-SHAFEI said that the Committee's representative could submit a full report on its activities, under item 9 of the provisional agenda of the World Conference. That might include a paper defining categories of States parties which had failed to fulfil their obligations under the Covenant. Agenda item 12 was also pertinent to the work of the Committee; without international cooperation, United Nations treaty bodies and other United Nations human rights organizations could not function.

57. He did not agree that the Committee should seek advisory opinions from the International Court of Justice regarding reservations to human rights instruments entered by States parties. He felt that most States parties would object to such a procedure as reservations were considered to be attributes of State sovereignty. He suggested that reservations should be stressed when treaty bodies examined the reports of States parties. The proposed comparative study (A/47/628, para. 36), which would need to examine reservations to all United Nations human rights instruments, was not within the competence of the Committee. He felt that general comments would be a more effective approach to the problem.

58. The Committee should explore ways to bring information and recommendations concerning massive human rights violations to the attention of the Security Council. Acting under its rules of procedure, the Committee could prepare a special report to the Secretary-General, who was authorized under Article 99 of the Charter, to bring to the attention of the Security Council any matter which might threaten the maintenance of international peace and security. The Security Council could benefit from information relating to human rights provided by the Committee, even when no such threat existed.

(Mr. El-Shafei)

59. Finally, he doubted whether the Committee's term of reference would permit it to examine the human rights situation in countries which had not submitted reports.

60. Mr. NDIAYE said that the Committee should not depart from the provisions of the Covenant, which authorized it to address its concerns to the Secretary-General, the Economic and Social Council or the General Assembly. In the event of massive human rights violations, the Committee could prepare a report, which might include recommendations for action, to the Secretary-General, who could, in turn, refer it to either the Security Council or the General Assembly. He approved of the current procedure for dealing with countries in crisis. Both Guinea and Niger, for example, had benefited from visits by experts from the Committee. He also felt that the Committee must adhere to its usual procedure with regard to reservations, since they were an important means of encouraging States to accede to multilateral instruments. Tight restrictions on the entering of reservations could discourage States from becoming parties to the treaty. In the light of the opinion that the International Court of Justice had delivered concerning reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, he doubted whether any purpose would be served by approaching the Court for advisory opinions.

61. He suggested that the Committee should lengthen one of its sessions by one week, to make progress on overdue communications. He strongly supported the idea of combining the three human rights treaty bodies established under the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. States parties should not have to direct their resources and energy towards three separate human rights bodies.

62. Mr. BRUNI CELLI said that he supported the idea of preparing general comments to address the problem of reservations to treaties. As the meeting of chairpersons had recommended (A/47/628, para. 36), a comparative study on reservations to treaties could be prepared by the Subcommission on Prevention of Discrimination and Protection of Minorities. He felt that on-site visits should be made to countries whose reports were overdue only in very special circumstances, such as, cases of massive human rights violations. The inter-American system for the protection of human rights had been conducting on-site visits for 30 years, and deemed them to be one of the most effective investigatory methods. He agreed that a way must be found to expedite overdue communications. If the Committee was insisting that States parties submit reports on time, it could hardly make allowances for a delay in conducting its own business. The Committee should arrange meetings not only with other United Nations treaty bodies, but with the three important regional regulatory human rights systems, the African Commission on Human Rights, the European Commission of Human Rights, and the Inter-American Commission on Human Rights; whose procedures and functions were essentially similar to its own.

63. Mr. POCAR agreed that the Committee should remain within its terms of reference and not attempt to establish a direct link with the Security Council. He also agreed that the Committee should draft general comments concerning reservations to treaties. The comparative study envisaged by the meeting of chairpersons was intended to provide an overview to help the General Assembly to address that issue in drafting new instruments.

64. On the question of the World Conference on Human Rights, he said that the chairpersons of treaty bodies had been denied expert status and permission to speak at the meetings of the Preparatory Committee. At the third session of the Preparatory Committee, the Chairman had stated that only delegations of Member States could present their views on the substance of the agenda of the World Conference. The chairpersons in attendance at that meeting had addressed a formal letter to the Secretary-General of the Conference protesting that restriction. Unfortunately, the rules of procedure of the World Conference had now been adopted and it was too late to change them. He proposed that an informal advisory body should meet during the next session of the Preparatory Committee.

65. He reminded the Committee that no reference had been made to a list of States whose reports were overdue at the most recent meeting of States parties, held in September 1992. The Committee might insist on presenting such a document to the forthcoming World Conference, perhaps including information on compliance with the Optional Protocol. He felt that the Committee should ask for reports from successor States to States parties to the Covenant, and in particular from the successor States to the former Union of Soviet Socialist Republics that had not yet agreed to accede to the Covenant. The Committee had requested reports from the successor States to the former Yugoslavia, so as to monitor the emergency situation there. However, the successor States to the former USSR should be asked to furnish reports, on a regular basis, commencing with the date of independence, whether or not an emergency existed.

66. Although he agreed that on-site visits by members of the Committee to States parties could contribute to its work, he felt that, for the present time, such visits should be conducted only with the State party's consent. He also agreed that the Committee should extend one of its sessions to expedite consideration of pending communications. He proposed that the Committee should first request an extended session on an exceptional basis, and then review the decision on the basis of the progress made.

67. He had emphasized the crucial importance of the textual information related to the work of treaty monitoring bodies at the meeting of chairpersons which had agreed that documents must be issued more promptly. He reminded the Committee that a Japanese corporation had offered to donate funds to the Centre for Human Rights for the publication of the Yearbook and of the official records of the Committee; its most recent communication, dated 22 March 1993, pledged US$ 250,000 for that purpose.

68. The CHAIRMAN said that he would be unable to attend the final session of the Preparatory Committee for the World Conference on Human Rights, to be held in Geneva later in April. Mr. Pocar had consented to represent the Committee if it so wished.

69. It was so decided.

The meeting rose at 6.05 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1229th MEETING

Held at Headquarters, New York,
on Tuesday, 6 April 1990, at 3 p.m.

Chairman: Mr. ANDO

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Action taken by the General Assembly at its forty-seventh session (continued)

(a) Annual report submitted by the Human Rights Committee under article 45 of the Covenant (continued)

* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1229/Add.1.

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CONTENTS (continued)

(b) Effective implementation of United Nations instruments on human rights and effective functioning of bodies established pursuant to two such instruments (continued)

Preparatory activities relating to the World Conference on Human Rights (continued)

Submission of reports by States parties under article 40 of the Covenant (continued)

Future meetings of the Committee

The meeting was called to order at 3.35 p.m.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SEVENTH SESSION (continued)

(a) ANNUAL REPORT SUBMITTED BY THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 45 OF THE COVENANT (continued)

(b) EFFECTIVE IMPLEMENTATION OF UNITED NATIONS INSTRUMENTS ON HUMAN RIGHTS AND EFFECTIVE FUNCTIONING OF BODIES ESTABLISHED PURSUANT TO SUCH INSTRUMENTS (continued)

PREPARATORY ACTIVITIES RELATING TO THE WORLD CONFERENCE ON HUMAN RIGHTS (continued)

1. The CHAIRMAN, reviewing what had been discussed at the 1228th meeting, said that there had been some differences of opinion regarding the relationship between the Committee and the Security Council and the General Assembly, and the Committee would have to be cautious in its approach. A number of opinions had been expressed regarding reservations to the Covenant, but in principle, everyone had agreed to deal with that question in the general comment. In that connection, he noted that the Committee was not entitled to seek advisory opinions from the International Court of Justice, although other United Nations bodies could do so. On the question of succession to the Covenant and to international human rights instruments by seceded or newly independent States of the former Soviet Union, as far as the Committee was concerned, the issue was solved; as to the former Yugoslavia, the Committee could try to apply the same method it had used in the case of the former Soviet Republics. On the question of dispatching a member of the Committee to Member States where there was an urgent need in view of the human rights situation, the Committee had had some experience in the case of Guinea; if it found it necessary to take such action again, it could perhaps follow the same practice. There had been general support for the suggestion that the Committee should ask for a special meeting or extended session in order to deal with the backlog of reports from States Parties and communications under the Optional Protocol.

2. A number of suggestions had been made with regard to the World Conference on Human Rights; one was that the Committee should present a paper to the World Conference about its work, referring to the backlog of communications, naming those States parties whose reports were in arrears and referring to the reactions of States parties to requests for further information in connection with communications, under the Optional Protocol.

3. Mr. HERNDL said that he assumed that the paper would name the countries which had not responded to follow-up requests and would not analyse cases in which the information received from the State did not tally with that received from the author.

4. Mrs. HIGGINS said that the paper should name only those countries which were beyond any doubt in default; those countries which fell into a grey area would not be named but would be part of the numerical total.

(Mrs. Higgins)

5. On the question of the successor States to the former Soviet Union, the Secretariat should draw up a list of independent States which were regarded as having succeeded to the obligations in respect of the Covenant undertaken by the predecessor State but which had not so far chosen to accede de novo to the Covenant; the Secretariat could then be asked to send a note verbale to those States indicating that, in the Committee's view, they had succeeded to human rights obligations from the time of independence and indicating the date on which their first periodic report would be due.

6. Lastly, she said that it was her understanding that the purpose of sending a Committee member to a State party would be to assist in the preparation of reports and to facilitate cooperation with the Committee.

7. Mr. EL-SHAFEI said that the paper to be submitted to the World Conference should be comprehensive and should name the States which had not submitted an initial report or were late in submitting subsequent reports, and also refer to the follow-up to communications. It was very important that that information should be submitted to the World Conference.

8. Mr. LALLAH said that the Committee should also list the States which had complied with their obligations and the States in which the process was still ongoing.

9. Mrs. EVATT said that if the Committee was to name States which had failed to respond to follow-up requests for information, the criteria it selected must be very clear and precise.

10. The CHAIRMAN said that the criteria would have to be very clear and objective. There would be time to consult members of the Committee on the paper before the World Conference took place. He took it that the Committee wished to proceed in that manner.

11. It was so decided.

12. The CHAIRMAN recalled that, at its 1227th meeting, the Committee had decided that at its next session, the mandate of the Working Group on Communications should be limited; that new communications should be considered only if they required urgent action, that a draft should be prepared on the question of follow-up for inclusion in the annual report, and that the Working Group should be requested to make recommendations on how to proceed, given the recalcitrance of certain States. He took it that the Committee wished to proceeded in that manner.

13. It was so decided.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

14. Mrs. KLEIN (Representative of the Secretary-General) said that since the end of the Committee's previous session, reports had been received from Bulgaria, Cameroon, Costa Rica, the Libyan Arab Jamahiriya and Tunisia. Bulgaria and the Libyan Arab Jamahiriya had indicated that their reports were

(Mrs. Klein)

combined second and third periodic reports; however, in accordance with past practice, the Secretariat had issued them as second period reports. There were 15 reports currently awaiting consideration.

15. The number of overdue reports had increased to 79. Although the Secretariat sent automatic reminders to States whose reports were overdue, some States were behind with more than one report. There were now 116 States parties to the Covenant, of which 67 had ratified the first Optional Protocol, and 16 had ratified the second Optional Protocol.

16. Mrs. HIGGINS said that the Committee should indicate in its report that States parties were not permitted to combine reports and that the date a State's second report was due would be fixed by the Committee at the conclusion of its consideration of the initial report.

17. Mrs. KLEIN (Representative of the Secretary-General), responding to a question from Mr. POCAR, said that the notification by the Office of Legal Affairs of 19 February 1993 had indicated that the date of effective succession by Slovenia to treaties and agreements deposited with the Secretary-General was 25 June 1991, the date of independence.

18. The CHAIRMAN, responding to a comment from Mr. LALLAH, said that the Bureau had already contacted the Permanent Missions of Gabon and Equatorial Guinea whose initial reports were long overdue.

19. Mrs. KLEIN (Representative of the Secretary-General), replying to a question from Mrs. CHANET, said that Cambodia's accession to the Covenant had taken effect on 26 August 1992; its initial report would therefore be due on 25 August 1993.

20. The CHAIRMAN said that the Bureau considered that at the next session the Committee should consider the third periodic reports of Hungary and Japan, the second periodic report of Egypt and the initial report of Ireland. The second periodic reports of Bulgaria and the Libyan Arab Jamahiriya would be kept in reserve since those reports had been long overdue.

21. Mr. AGUILAR recalled that the Committee had also agreed to request a report on the new amnesty law and how it affected the human rights situation in El Salvador, for consideration at the forty-eighth session.

22. Mr. POCAR said that although he was willing to go along with that proposal, he would prefer the Committee to consider the report of Bulgaria, or that of the Libyan Arab Jamahiriya, both of which were nearly 10 years overdue.

23. Mrs. HIGGINS said that the Committee's special procedure under article 40 should be used only when truly major human rights violations were occurring that required the Committee's immediate attention. The current problems in El Salvador, though serious, were not very different from those in several other countries in the region, and therefore the use of the special procedure to hear the report of El Salvador did not seem justified.

24. Mr. AGUILAR noted that there had been recent reports in the United States press of serious violations of the right to life in El Salvador. The last time El Salvador had come before the Committee was in 1983. Since then, that country had experienced a very cruel war that had prompted over 1 million people - some 20 per cent of the country's population - to seek refuge abroad. Great efforts should be made to prevent El Salvador from returning to the situation of the 1980s.

25. Mr. BRUNI CELLI said that, given the current situation in El Salvador, a report should be submitted as soon as possible. Although both the Government of El Salvador and the liberation front had agreed, within the context of the peace agreement, to accept the conclusions of the Commission set up to study the most salient human rights violations, they had not yet done so. The country had just emerged from 12 years of fighting which had left the economy totally destroyed and the political structure badly damaged. For all those reasons it was a good time to call upon El Salvador to submit its report to the Committee.

26. Mr. LALLAH said that the Committee should reserve its special procedure for truly exceptional situations. There was no doubt that El Salvador's recent history had been a bloody one; however, the current situation was somewhat different.

27. Mr. MAVROMMATIS said that the Committee took reports out of the normal rotation procedure only on the basis of certain criteria. While the situation in El Salvador was urgent, in order to be consistent, the Committee should first hear a report from one of the former republics of the Soviet Union, such as Armenia or Azerbaijan.

28. The CHAIRMAN suggested that he should send a letter directly to the Foreign Minister of El Salvador requesting clarification regarding the delay in the submission of its report. If the situation remained serious the Committee could decide, at its forty-eighth session, to hear the report at the fall session.

29. Mrs. CHANET pointed out that the Committee must not allow itself to be unduly impressed by reports in the media, especially in the Western media which tended to focus on regions that corresponded to Western interests. She agreed with the Chairman's suggestion that he should contact the Foreign Minister of El Salvador directly; similar procedures should be used with respect to Haiti, the Sudan and Zaire, where the situation was perhaps even worse than in certain countries for which the special procedure had been applied.

30. Mr. AGUILAR commended the Chairman on his statement and noted that, despite repeated assurances from very high-ranking Salvadorian officials, including the President and the Minister for Foreign Affairs, that the report would be submitted, it had yet to be received. It had been 10 years since a representative of El Salvador appeared before the Committee; in the intervening period, over 100,000 people had been killed. Although the Human Rights Committee had not reacted then, it now had the opportunity to help prevent El Salvador from sliding back into a tragic period of its history by acting to deal with the serious violations that were taking place there. The Committee should not allow itself to be influenced by what was in vogue in the international news media which had lost interest in what was currently occurring in El Salvador, especially the fact that the parliament of that country was now

(Mr. Aguilar)

debating the reintroduction of legal instruments such as the death penalty, in violation of certain international obligations such as those under the American Convention on Human Rights. El Salvador wanted to denounce international human rights covenants including the International Covenant on Civil and Political Rights.

31. Mr. PRADO VALLEJO agreed with Mr. Aguilar, Mr. Bruni Celli and Mrs. Chanet that the Committee should act immediately and call upon El Salvador to submit the two overdue reports as soon as possible. In fact it should submit a report regarding the current situation in the country at the Committee's July session.

32. The report of the Commission on the Truth had not only demonstrated that horrendous human rights violations had occurred in El Salvador but had also identified the perpetrators of those crimes, many of whom remained in power. He wondered how the Committee could fail to take a decision, especially since the Salvadorian authorities had responded to the report by enacting an amnesty law to prevent the investigation of those crimes. The Committee had acted in equally difficult cases in other parts of the world and it should do so again.

33. Mrs. EVATT wanted to know whether the Committee had established criteria for the use of the special and urgent procedure. She had understood from her reading that the procedure was intended to apply to current, continuing violations of rights on a large scale.

34. The CHAIRMAN said that as far as he could recall, in the case of Iraq, the Committee had specified articles 6, 7, 9, 10 and 27 of the Covenant. In the case of the former Yugoslavia, a more general approach had been adopted. With respect to Peru, articles 4, 6, 7, 9, 19 and 25 had been cited. As regarded Serbia, Montenegro, Bosnia and Herzegovina and Croatia, articles 6, 7, 9, 10, 12 and 20 had been specified. He asked whether those who favoured a special decision on El Salvador would not be satisfied with a letter from the Chairman to the foreign ministry followed by a three-month wait.

35. Mr. AGUILAR said that in view of what had occurred in El Salvador and the Government's response to the report of the Commission on the Truth it seemed highly improbable that a letter would elicit any response. The Committee should ask the Government to submit a report and point out that it would go ahead and study the El Salvador case anyway, whether or not the report was forthcoming.

36. The CHAIRMAN said that if he heard no strong objections, he would take it that the Committee agreed to Mr. Aguilar's proposal that the Committee should decide to request general information on the current human rights situation in El Salvador, as it had done in the case of the first decision on the former Yugoslavia.

37. Mr. LALLAH said that he had very serious objections to that proposal. The Committee did not have the competence to take such action. The proposal that the Chairman should send a special letter to El Salvador as well as to Haiti, the Sudan and Zaire was an excellent one. The Committee could wait for three months and then take a decision in the light of the response it received.

38. Mr. AGUILAR proposed that the Committee should take a decision on El Salvador along the lines of the first decision it had taken on Yugoslavia requesting general information on the current human rights situation in the country.

39. Mrs. HIGGINS said that she did not think that was the proper way to proceed and preferred the Chairman's proposal.

40. The CHAIRMAN said that, if there were no objections, the Committee would adopt his original proposal to send strongly worded letters to the authorities of El Salvador as well as of Haiti, the Sudan and Zaire, asking them to submit their reports immediately.

41. It was so decided.

FUTURE MEETINGS OF THE COMMITTEE

42. The CHAIRMAN recalled that as far as the current year was concerned, the Committee had already decided that its 48th and 49th meetings would take place from 12 to 30 July 1993 and from 18 October to 6 November 1993 respectively at Geneva. The future sessions of the Committee would be held in accordance with the published schedule.

43. Mrs. CHANET, replying to a question from Mr. AGUILAR concerning Haiti, said that the letter would be addressed to the Government that was recognized by the international community and that had a seat at the United Nations. If that Government was unable to provide the information the Committee sought, the Committee could secure such information from non-governmental organizations and study the situation of Haiti in the light of the provisions of the Covenant.

44. The CHAIRMAN, replying to a question from Mrs. HIGGINS, said that the extended session would be the spring session.

The meeting rose at 5.20 p.m.

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14 May 1993

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HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1230th MEETING

Held at Headquarters, New York,
on Wednesday, 7 April 1993, at 10 a.m.

Chairman: Mr. ANDO

later: Mr. EL-SHAFEI
(Vice-Chairman)

later: Mr. ANDO
(Chairman)

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of the Islamic Republic of Iran

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of the Islamic Republic of Iran (CCPR/C/28/Add.15)

1. At the invitation of the Chairman, Mr. Mehrpour and Mr. Nasseri (Islamic Republic of Iran) took places at the Committee table.

2. The CHAIRMAN recalled that consideration of the report had been held over from the forty-sixth session, in Geneva, and invited the delegation to continue its replies to the questions raised after the Committee had heard its statement on section II of the list of issues.

3. Mr. MEHRPOUR (Islamic Republic of Iran) referred to Mr. Sadi's question concerning the justification under Islamic law for imposing the death penalty for drug trafficking and armed robbery which had not entailed any deaths. First, he observed that the Islamic Republic of Iran had no interest in increasing the number of crimes for which the death penalty could be imposed. On the contrary, its intention was to impose the death penalty as little as possible. According to Islam, the death penalty could only be justified if lives were endangered by the crime in question. The Koran contained verses stipulating the death penalty for murder and for corruption, which various Islamic scholars had interpreted to mean resorting to arms and posing a threat to security. Accordingly, a person could receive the death penalty for committing a crime which did not necessarily lead to murder, but which created fear and corruption. However, that was dependent on the seriousness of the crime and its effects, banishment being the alternative penalty for corruption.

4. While he accepted the emphasis in article 6, paragraph 2, of the Covenant that the death penalty could only be imposed for "the most serious crimes", it had to be said that no further specification as to those crimes was given. Different countries had different concepts of what constituted a serious crime. His country was not alone in regarding drug offences as serious crimes which merited the death penalty in view of their pernicious and destabilizing effects on society. If the situation in his country were to change, the penalty could be made less severe. Currently, however, as the world's second largest drugs producer (according to a United Nations report), it was particularly susceptible to the drug problem, which was intensified by virtue of its geographical location.

5. With a view to explaining the background to the severe penalties currently imposed for drug offences, he reviewed the anti-drug legislation enacted in his country. In 1955, a law had been promulgated prescribing a penalty of 6 to 12 months' imprisonment for the cultivation of opium. Addicts had been cautioned to abandon their habit, failing which they faced three months' imprisonment. However, drug-related activities had continued to escalate, and a new law, promulgated in 1959, had increased the penalty for drug manufacturers and importers to between 5 and 15 years' imprisonment, plus a fine. In 1967, a law had been ratified permitting the cultivation of opium for medicinal use, as a result of which the number of addicts had risen dramatically. Further laws

(Mr. Mehrpour, Islamic Republic of Iran)

had thus been enacted in 1968 and 1981, referring serious drug cases to the military courts and imposing the death penalty for anyone selling, manufacturing or importing certain amounts of heroin or opium. However, drug use had become still more widespread, with the involvement of armed gangs of drug smugglers, and the situation had grown more critical in terms of corruption and damage caused to society, which were treated more seriously following the Islamic Revolution. The opinions of Islamic scholars had therefore been explored and the different aspects of the problem discussed at length by the Islamic judiciary. The outcome had been the 1988 anti-drugs law, which still imposed the death penalty for various drug offences (see document CCPR/C/28/Add.15, paras. 61 (a), (b), (c) and (d)).

6. The 1988 law was less stringent in terms of the quantity of drugs in respect of which the death penalty could be imposed; for example, in some instances, the quantity of drugs required for imposition of the death penalty was currently five kilograms as opposed to as little as one gram before. In addition, alternative penalties of imprisonment and fines were currently imposed in the case of first offenders and smaller quantities of drugs. The law also provided that addicts must be offered the possibility of treatment; the Islamic Republic of Iran currently had 17 rehabilitation centres, where addicts were cured and received professional and vocational training. He recalled that, according to a United Nations report, other countries imposed the death sentence for offences involving lesser quantities of narcotic drugs and psychotropic substances. In any event, persons guilty of possessing small amounts of opium or heroin were rarely executed; most executions involved individuals with prior criminal records found to be in possession of very large quantities of drugs. A first offence was generally treated with leniency.

7. In reply to Mr. Sadi's second question, concerning torture, he said that not only was torture forbidden by article 38 of his country's Constitution, but article 39 ensured that detained persons would be treated with respect. Articles 58 and 59 of the Islamic Punishment Law provided for a penalty of up to one year in prison for the torture of an accused person; the individual ordering the torture would also be prosecuted. The provisions of the Constitution and of the Islamic Punishment Law left no room for doubt about the prohibition of torture in his country.

8. With regard to Mr. Sadi's final question, a sentence of death or life imprisonment could be appealed, according to the Law pertaining to Revision of Court Judgements and the Manner of Their Investigation adopted in 1988. In 1992, 920 cases decided by the Revolutionary Courts had been reviewed by the Supreme Court. Five hundred and forty lower court cases were under review for appeal and 190 decisions had been nullified for various reasons including improper legal procedures during the trial stage. The definition of corruption included the use of arms to create terror and to destabilize society, and such crimes justified severe punishment. Some cases of armed robbery, as well as collective acts intended to destabilize society, were also covered in the laws against corruption.

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9. Several members had referred to the death sentence passed on the writer Salman Rushdie and had requested an explanation of its relationship to the Covenant. The Western world must understand that Mr. Rushdie's book was a severe insult to Islam and to the Prophet, a person considered by most in the Islamic world as the messenger of God's Word. That insult had caused a reaction in many countries besides Iran. Article 19, paragraph 2, of the Covenant guaranteed the right to freedom of expression, but paragraph 3 further stated that the exercise of that right carried with it special duties and responsibilities and that it might be subject to certain limitations. An individual who had disregarded those limitations should be punished. Moreover, it was important to point out that the Iranian Parliament had not passed any law calling for Mr. Rushdie's execution, nor had any court condemned him. The Imam Khomeini, as a religious leader and not as a representative of the Government, had issued a religious decree, or fatwa, against him. Any action taken in response to that decree would be based on an individual's religious belief.

10. Mr. El-Shafei, Vice-Chairman, took the Chair.

11. Mr. MEHRPOUR (Islamic Republic of Iran) said that, in Iranian tradition, rape and adultery were very serious crimes and, in certain cases, Islamic criminal law provided for the death sentence. The severity of the punishment was based on the widely held view that such crimes destabilized the foundations of the family. With respect to Mrs. Chanet's observation that the death sentence should be pronounced in accordance with the legislation in force, he drew attention to article 36 of the Constitution of the Islamic Republic of Iran, which stated that "the passing and execution of a sentence must be only by a competent court and in accordance with the law". Moreover, article 169 of the Constitution stipulated that "no act or omission may be regarded as a crime with retrospective effect on the basis of a law framed subsequently". Once the law established that an act constituted a crime, that act became punishable under the law. In cases where a new law that decreased a sentence was adopted, the decreased sentence would be applied to persons who had received harsher sentences under the old law.

12. Under article 167 of the Constitution, the judge was bound to endeavour to try each case on the basis of the codified law. In cases where such law did not exist, he had to deliver his judgement on the basis of authoritative Islamic sources and authentic fatwa (religious decrees). The judge could not, on the pretext of the silence or deficiency of the law in the matter, or its brevity or its contradictory nature, refrain from admitting and examining cases and delivering his judgement. In countries, such as France, that were bound entirely by codified law, the judge, in issuing the sentence, had to consult the civil laws. In Iran, however, when the law was silent on certain acts and crimes, the judge could consult other sources of law, such as common law tradition, and he could seek the opinion of Islamic scholars.

13. Mrs. Chanet had noted that Amnesty International had reported that 2,500 people had been executed for political reasons in Iran during a six-month period (mid-1988 to the beginning of 1989). That was not true. Under Iranian law, no one could be executed for political reasons alone. Mrs. Chanet had referred

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to the report of the Special Representative of the Commission on Human Rights (E/CN.4/1992/34) in which it was stated that an assistant professor at the University of Tabriz had allegedly been executed for having criticized the Government's economic and social policy. The fact was that the assistant professor had insulted the principles of the Islamic Republic of Iran, and his students had brought him to the prosecutor's office where he had been questioned and sentenced to four months in prison. The assistant professor's sentence had subsequently been suspended but he had been warned that the sentence would be carried out if he committed another crime. The assistant professor was still teaching at the University of Tabriz.

14. With regard to corporal punishment, Mrs. Chanet had asked whether the Iranian authorities would consider bringing their legislation into line with the Covenant. Iranian criminal law provided for certain forms of corporal punishment, including flogging and stoning. If a court decided that a person who had been found guilty should be flogged, the flogging was not considered to be torture, since that form of punishment existed under Islamic law. The advisability of inflicting such forms of corporal punishment was currently being discussed at the highest levels of Government and by lawyers and jurists. For certain crimes, the sentence of flogging had been abolished and commuted to imprisonment or the payment of a fine.

15. With respect to the query raised about the status of women in Iran, he noted that all women were allowed to vote and to be elected to parliament. A few months earlier, there had been a seminar on the question of whether or not women should have the right to be elected as judges.

16. Mr. Ando resumed the Chair.

17. Mr. MEHRPOUR (Islamic Republic of Iran) replying to Mrs. Higgins' query whether non-Islamic religious beliefs could be invoked as a reason for imposing the death penalty, said that article 23 of the Constitution stated that no one could be punished or prosecuted for his beliefs. Iranian criminal legislation enumerated all crimes and corresponding punishments, and non-Islamic belief was not among the crimes. In practice, no court had ever prosecuted any individual for his beliefs but even if it had, the Supreme Court would have prevented the sentence from being carried out. If persons belonging to other religious denominations had been executed, it was because of crimes they had committed and not because of their beliefs. A number of members of the Committee had referred to Baha'is who had been or were about to be executed. The report of the Special Representative of the Commission on Human Rights (E/CN.4/1993/41) had given specific names. Two of those said to have been executed had indeed been sentenced to death by a lower court on other charges, including treason, but the sentence had subsequently been set aside on appeal to the Supreme Court because the degree of treason had not warranted capital punishment and because the court had failed to appoint a lawyer even though the accused had refused legal representation.

18. He had already indicated that the Islamic Revolutionary Courts still existed, as part of the judiciary branch of the Ministry of Justice. As he had said, their verdicts, issued on the basis of criminal legislation, could be

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appealed and indeed many had in practice been overruled. The misunderstanding on that point in the report of the Special Representative was perhaps due to the fact that article 11 of the Act establishing the Revolutionary Courts in the first year of the Revolution had stipulated that their judgements would be final; however, that Act had been automatically repealed upon passage of the 1988 Law pertaining to Revision of Court Judgements and the Manner of Their Investigation, discussed in paragraph 32 of the periodic report. The latter law had been prompted by a 1988 court ruling in Qom that all sentences of capital punishment must be reviewed, and that all judgements by all lower courts were subject to appeal.

19. Mr. Dimitrijević had argued that the Covenant was an expression of fundamental humanitarian principles that were beyond interpretation according to any particular culture. That was also his Government's understanding of the Covenant, as an embodiment of universal principles of justice and humaneness. It was on specific issues, however, that interpretations would differ from culture to culture - for example, in the definition of certain crimes or of the civil rights of individuals. Those who practised justice did so in a humanitarian way, but their interpretation of how the laws should be executed would differ.

20. The Islamic Republic of Iran had, like the previous regime, accepted the Covenant. The Republic, however, had an inescapable obligation to the majority of its people, who had by their vote established that Iran must have a Government based on Islamic law. All legislation in the country must therefore be based on Islamic laws and ratified as such. In its legislation, his country was trying to move in the direction of achieving the clarity of the Covenant, and in the process was reviewing even laws which its leaders had said were fixed and unalterable in Islamic law. He would not deny that it was a real problem. Regardless of the Committee's categorical interpretation of the provisions of the Covenant, his Government, when an Islamic decree was at odds with a provision of the Covenant, could not take sides without alienating its people and its elected parliament, who had voted for the decree. There should not be dogmatism on either side; his Government for its part was trying to reduce dogmatism. He had published in the Islamic Republic of Iran a report on the Covenant and the work of the Committee given to the delegation at the previous session, and Iranian jurists had been asked to review the issue of discrepancies between Iranian law and the Covenant. He would be glad to receive further suggestions on that point by the Committee.

21. Mr. Dimitrijević's understanding that deliberate murder, a serious crime punishable by death, was regarded as a private matter to be settled between the murderer and the victim's next of kin was not quite accurate. There were two aspects to deliberate murder, the public and the private. The crime violated the dignity of society and thus the police and the courts must step in to find and punish the perpetrator, following a series of procedures laid down in the laws and court regulations of the country. However, in addition to society, the victims had a stake in the matter, and if when the murderer received the mandatory death sentence the victim's family forgave him, the Government would not insist on his execution.

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22. The remaining questions raised by members of the Committee had already been dealt with.

23. Mr. SADI asked whether it was true that Islam condoned the continued application of the punishment of amputation on condition that the person so sentenced would be guaranteed full economic security.

24. Mr. MEHRPOUR (Islamic Republic of Iran) said that that particular form of punishment was under review.

25. Mr. NASSERI (Islamic Republic of Iran) observed that many of the Committee's perceptions of failings in his country seemed to be dictated by the not uncommon depiction of it, in the media and elsewhere, as a country set apart, ruled in the absence of laws by judges whose decrees were based on a subjective interpretation of crimes. Most of the Committee's questions had focused on the Republic's conformity with the provisions of the Covenant. His Government had concluded that it did conform. It cherished Islamic law, including its penal laws, and was privileged to have been one of the first countries to reapply it in modern times. The whole enterprise was a new one, and his Government must do much searching to be sure to be faithful both to Islamic law and to its commitments to international law. It seemed to be a source of difficulty for the Committee that the people had opted to be governed exclusively by Islamic law. Another main problem had been the interpretation of what constituted serious crimes. Also, the prevailing view seemed to be that there were many executions in the Islamic Republic of Iran. With regard to the sensational cases related to drug crimes, he explained that a very serious infiltration of drugs had developed on the country's unguarded eastern border while the Government had been occupied during the nine-year war with Iraq in defending its western border, and that situation had currently reached crisis proportions which required a very tough approach if it was to be controlled.

The meeting rose at 1.10 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1231st MEETING

Held at Headquarters, New York,
on Wednesday, 7 April 1993, at 3 p.m.

Chairman: Mr. ANDO

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The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of the Islamic Republic of Iran (continued) (CCPR/C/28/Add.15)

1. At the invitation of the Chairman, Mr. Mehrpour and Mr. Nasseri (Islamic Republic of Iran) took places at the Committee table.

Right to a fair trial (article 14 of the Covenant) (section III of the list of issues)

2. The CHAIRMAN read out section III of the list of issues concerning the second periodic report of the Islamic Republic of Iran, namely: (a) the legislative provisions governing the tenure, dismissal and disciplining of members of the judiciary, and the manner in which the independence and impartiality of judges was ensured; (b) the jurisdiction and activities of the National General Inspectorate, the Administrative Justice Tribunal and the Revolutionary Courts, as well as the legal status of the revolutionary guards and the revolutionary prosecutors, and their relationship with ordinary courts; (c) the statement in paragraph 65 of the report that prosecution, trial, issuance and enforcement of a retribution verdict depended on the request of the next of kin; and (d) the organization and functioning of the Bar in the Islamic Republic of Iran.

3. Mr. MEHRPOUR (Islamic Republic of Iran), replying to Mr. Sadi's question concerning the practice of amputating a hand as a punishment for theft, said that such a punishment was provided for in the Koran, subject to a number of conditions. Extenuating circumstances were also taken into account; for example, if the theft was committed during a famine, the punishment would not be applied.

4. Referring to section III (a), he said that the independence of the judiciary was guaranteed by the Constitution. Judges were elected on the basis of their professional qualifications and high moral character. If a judge was alleged to have committed an error, his actions were reviewed by a special disciplinary office, which took appropriate administrative measures. Judges were not permitted to intervene in the selection of lawyers for the accused; such misconduct by a judge could lead to his ruling being overturned or to his dismissal by a higher court. At the same time, no other branch of Government had the power to prevent judicial decisions from being implemented. Article 164 of the Constitution stipulated that a judge could not be removed without proof that he had committed violations of the law; accordingly, emphasis was placed on preserving the independence and impartiality of the judiciary.

5. Referring to section III (b), he said that the functions of the National General Inspectorate had been defined after the Islamic Revolution. The Inspectorate monitored the administration of government and the implementation of the laws. Inspections were carried out on a case-by-case basis or on a thematic basis. In the first instance, the Inspectorate reviewed complaints brought by individuals and submitted reports to the parliamentary commission established under article 90 of the Constitution, or to the relevant ministry,

(Mr. Mehrpour, Islamic Republic of Iran)

for investigation. In the second instance, violations committed within the armed forces or State-owned corporations were reported to local prosecutors.

6. The Administrative Justice Tribunal was part of the judicial branch; it reviewed complaints brought by individuals against government agencies, and had the authority to reverse the decisions of such agencies if they were found to be unconstitutional.

7. The Revolutionary Courts had been established at the beginning of the Islamic Revolution. Their powers and functions were stipulated in article 150 of the Constitution. Like the armed forces, the Revolutionary Courts were under the supervision of the Ministry of Defence.

8. The revolutionary guards were members of the armed forces; they did not have prosecutorial functions, but played a role in enforcing discipline. The revolutionary guards had defended the interests of the Islamic Revolution during the war with Iraq. If a member of the revolutionary guards committed a crime which was related to the performance of military duties, that crime would be investigated and prosecuted by military courts; however, if the crime was in no way related to the performance of military duties, the individual would be tried in an ordinary court.

9. Referring to section III (d), he said that persons wishing to practice law must have attained at least a bachelor's degree and must apply for admission to the Bar. Upon completion of a training course, they sat for an examination and, if successful, received a licence to practice law. Currently, there were 2,661 lawyers in his country, of whom 185 were women; 267 persons, including 67 women, were attending law school.

10. The independence of the Bar was guaranteed by law; lawyers were free to accept any clients they wished. In the case of accusations that were liable to capital punishment or to life imprisonment, it was compulsory to appoint a lawyer; defendants could have lawyers assigned to them free of charge if they were unable to pay.

11. With regard to the fact that the head of the Iranian Bar Association had been appointed by the Government, he said that was a temporary appointment, pending the holding of new elections.

12. Complaints against lawyers and judges were reviewed by disciplinary courts, which handed down penalties where appropriate; those decisions were also subject to appeal.

13. With regard to the appeals procedure, all sentences could be appealed and, even in the case of murder convictions, sentences were not executed until all appeals had been exhausted. Furthermore, the Constitution provided for a waiting period between the rendering of a final decision and the execution of sentence. During that period, sentences could be appealed to the Supreme Court. The convicted person could also request a pardon; such requests were referred to a commission consisting of judicial and prison officials. Executions could not be carried out while requests for clemency were being considered.

Constitutional and legal framework within which the Covenant is implemented (articles 12 and 13 of the Covenant) (section IV of the list of issues)

14. THE CHAIRMAN read out section IV of the list of issues concerning the second periodic report of Iran, namely (a) the cases in which an individual could be banished from his place of residence, prevented from residing in the place of his choice, or compelled to reside in a given locality, and the compatibility of those provisions with article 12 of the Covenant; (b) the enjoyment, in the Islamic Republic of Iran, of the right of everyone to leave any country, including his own; (c) the conditions and procedure relating to the issuance of exit visas for foreigners whose duration of stay exceeded 90 days.

15. Mr. MEHRPOUR (Islamic Republic of Iran) noted that under the Islamic Punishment Law an individual who had committed certain crimes, depending on the type of crime and the nature of the defendant, could receive banishment in addition to the punishment determined by the Court. Article 90 of the Islamic Punishment Law stated that "(for) anyone convicted (of) a crime, the Court is authorized to deprive the convicted person of his social rights and also prohibit him from residing in any place or compel him to stay in a specific place. Such deprivation should be for a specific period of time and proportionate to the crime". That provision, in accordance with decisions of the Court, did not contradict article 12 of the Covenant.

16. In accordance with the rules of criminal procedure, individuals accused of criminal acts could be imprisoned or released, depending on the severity of the crime. In most cases, defendants were released on bail but might not be allowed to leave the jurisdiction concerned while awaiting trial.

17. Regarding the right of an individual to leave his country, no governmental authority without a judicial decree could prevent an individual from leaving the country. Certain restrictions did apply in the case of individuals who were being prosecuted and convicted criminals and in other limited legal circumstances.

18. Lastly, there were specific rules regarding the movement of foreigners in the country, the details of which were presented in paragraph 145 of the second periodic report. Foreigners were granted visas according them the right to stay in the country for 90 days; upon expiration of that visa, their stay would be considered illegal. If such foreigners could not renew their visa, and if they had no other legal status enabling them to remain in the country, they were obliged to leave.

19. Mrs. CHANET asked for more details regarding trials in the Revolutionary Court, which according to the note by the Secretary-General on the situation of human rights in the Islamic Republic of Iran, were almost always held in secret, inside prisons; proceedings were said to be summary, with no possibility even for defence counsel to attend (A/47/617, para. 57). She wondered under which conditions an individual could choose his or her defence counsel.

20. The right to appeal, in particular before the Revolutionary Courts, appeared not to be general, in that it existed in certain cases, but not in all. There had been instances where executions had been carried out before an appeal process could take place. She asked if the delegation could give more details regarding those proceedings and, in particular, regarding the right of appeal before the Revolutionary Courts.

(Mrs. Chanet)

21. Regarding the recruiting of judges, she sought clarification as to whether they were recruited solely from religious seminaries and whether their training had become broader. It appeared that judges could be dismissed for religious reasons or in the interest of society without the right to appeal. She would like to know what was meant by the "interest of society" and whether judges could be dismissed solely on the basis of religious considerations.

22. Mr. FODOR, referring to article 61 of the Constitution of the Islamic Republic of Iran, which stated that courts of justice were to be formed in accordance with the criteria of Islam, sought clarification as to whether there was a law that determined those criteria or if they were derived freely from religious principles. Regarding article 167 of the Constitution, which provided that in the absence of codified law judgements were to be delivered on the basis of authoritative Islamic sources and authentic fatawa (religious decrees), he questioned whether such religious decrees could be considered part of national law, since they could certainly not be considered part of international law in accordance with article 14 of the Covenant, and in what way a non-believer or believer of another religion was bound by the decrees of a specific religion.

23. Regarding public trials, in particular in the Revolutionary Courts, he asked whether statistics were available regarding the percentage of trials held in camera. Secondly, he inquired whether the judgements rendered by criminal courts were made public, even if the trials were not public.

24. According to article 168 of the Constitution, the definition of political offences was to be determined by law. It would be useful to know whether such a law had been adopted and, if so, whether it contained a precise list or merely criteria for determining political offences.

25. Paragraph 156 of the second periodic report referred to Penal and Legal Courts. He would like to know what the difference was between Legal Courts and Special Civil Courts. He would also welcome clarification as to the jurisdiction of the special clerics court referred to in paragraph 174 of the report and wondered if that court was also a criminal court. He inquired why it was necessary to have so many different types of courts, in particular so many special courts.

26. It would be interesting to learn whether the list of grounds on which review could be requested, which appeared in paragraph 155 of the second periodic report, was exhaustive or whether there were other grounds for appeal, in particular in the case of punishments considered too severe. Lastly, regarding trial guarantees, he requested clarification as to which limitations on procedural safeguards were applied in practice by the Revolutionary and Military Courts and whether defendants before those courts had unlimited access to lawyers, adequate time and facilities for the preparation of their defence and the possibility of calling witnesses on their behalf.

27. Mrs. HIGGINS said that she had specific questions regarding the right to a fair trial. Basing her first question on the reported execution in 1988 of 2,500 individuals who had been sentenced not to execution but to terms of imprisonment, she asked in what circumstances individuals who had been sentenced to one type of penalty could be subjected to another. Second, she sought clarification as to the role of repentance in release and specifically whether

(Mrs. Higgins)

it was correct that one not only had to serve the specified term, but also indicate repentance. Third, she wondered whether it was correct that those who had been sentenced as political prisoners were not released unconditionally, but always subject to recall. Fourth, she would like to know whether it was true that regardless of, or perhaps in conformity with, what the law provided, political prisoners often did not see a lawyer at any stage. Since the Revolutionary Courts did provide for appeal, she wondered what the permitted grounds for appeal were and expressed concern that if executions happened quickly, the right to appeal might become illusory. Where capital offences were concerned, documents were supposed to go on to the Supreme Court, but apparently executions often occurred within 10 days. The example of Mr. Bahman Samandari, a member of the Baha'i community in Teheran who had been arrested on 17 March 1992 and executed the following day, gave rise to disturbing questions about the fairness of trial and appeal.

28. Lastly, she would welcome clarification regarding reports that charges were often extremely vague and proceedings ended rapidly, because confession was often at the heart of the evidence in a trial. If confession under torture was not to be admitted, she wondered what checks were made to see how a confession had been obtained; it was said that trials often ended so rapidly that defendants were not clear whether they were still under investigation or involved in a trial.

29. Mr. EL-SHAFEI said that in view of the legal tradition in the Islamic Republic of Iran which recognized the authority of a number of qualified people to issue fatawa (religious decrees), the adoption of codified legislation dealing with both criminal and civil matters, and the existence of numerous categories of courts, he would like to know whether the administration of justice and the application of law were not rendered unduly complicated. Individuals had apparently been executed in cases involving loosely defined capital offences on the basis of a personal interpretation of the law and there were numerous instances of personal property being seized on the basis of fatawa. He thought that the institution of fatawa might impede the equitable application of law and would welcome clarification as to the remedies available in the case of a discrepancy between fatawa and the applicable law. He wondered whether that situation would give rise to uncertainties about the valid sources of law and what impact it had on the legal system as a whole.

30. Mrs. EVATT, referring to article 32 of the Constitution, which dealt with the rights of arrested persons to be informed of charges and to be brought to court within 24 hours, inquired how an individual whose rights had not been respected could lodge a complaint in that regard, and what procedure would be followed. She wondered whether in practice there had been any such complaints and subsequent prosecutions for violation of that article. Regarding the fact that the election of members of the Bar Council, scheduled to take place in October 1991, had been postponed, she asked if elections were planned for the near future and whether it was correct that the Government had passed laws enabling it to dismiss members of the Bar Association.

31. Regarding questions of equality before the law under article 3, paragraph 14, of the Constitution and the position of women in relation to the justice system, she sought clarification regarding reports that a woman was not considered a competent witness in connection with a serious criminal charge and

(Mrs. Evatt)

that a woman's evidence did not rank equally with that of a man under Islamic law. If that was the case, she wondered what consequences that situation had for offences where the woman herself was the victim of violence and rape and whether that meant it was impossible to secure a conviction in the case of such offences. She also requested additional information as to how that approach to evidence given by women affected prosecutions for the crime of adultery, the number of women and men who were prosecuted for such an offence and the number who were sentenced to death. At the previous session of the Committee the representative of the Islamic Republic of Iran had stated that the faculty of judicial sciences was contemplating admitting women in 1993. She would like to know whether that had in fact yet occurred. Since women in Iran needed the permission of their husbands to travel abroad or take employment, she inquired whether men required similar permission from their spouses.

32. Lastly, it would be interesting to learn whether a study of the law had been undertaken to determine the extent to which Islamic scriptures contained texts that could be more fully emphasized because they supported the universal principles of the Covenant and whether the assistance of Islamic scholars in other countries, including human rights experts and women scholars of Islam, had been sought.

33. Mr. LALLAH said it was very gratifying to learn that there was an ongoing review and discussion with regard to possible inconsistencies between the Covenant and the laws applied in the Islamic Republic of Iran, particularly those relating to punishment. He associated himself with Mr. Fodor's questions regarding grounds for appeal and limits to the right to appeal and the comments of Mrs. Chanet, Mr. Fodor and Mrs. Higgins with respect to procedures governing fair trials.

34. Mr. Mehrpour's statement that his country had entered a new era of application of Islamic law was very important with regard to article 15 of the Covenant, because laws must be certain. In various other legal systems, such as the common law system, the law was certain because judges pronounced judgement on the basis of precedents. If the new Islamic law was being applied in accordance with a text based on the Koran, then offences must be accurately defined. Since there was a provision regarding non-retroactivity, he wondered when the new era of Islamic law had begun and whether any individuals were still awaiting trial for offences committed before the application of that law. Banishment was in complete violation of article 12 (3) of the Covenant. The right to freedom of movement could not be derogated from even in times of emergency under article 4 of the Covenant.

35. Mr. BRUNI CELLI said that according to Mr. Nasseri, efforts had been made to reduce capital punishment. Paragraphs 55 to 76 of the second periodic report referred to article 6 of the Covenant, on protection of the right to life, and paragraph 59 listed what were considered the most serious crimes. However, although Mr. Nasseri had recognized that the Revolutionary Courts were part of the Justice Department, they were not mentioned in those paragraphs; he wondered whether that meant that they had nothing to do with the imposition of the death penalty. As far as he could see, no links had been established between the most serious crimes liable to the death penalty and political offences. However, information received by the Committee indicated that political detainees had been summarily tried in secret and sentenced to death without the assistance of

(Mr. Bruni Celli)

lawyers or the presence of relatives and without any right to appeal. Of the 301 executions ordered by courts in the Islamic Republic of Iran in 1992, 64 could be attributed to political reasons; those executed included members of political parties. Another related cause for concern was extrajudicial executions, especially of political detainees. People had also been executed for their religious beliefs, a specific example being that of members of the Baha'i community. It had been reported that members of that community were not protected by the Constitution of the Islamic Republic of Iran, and that they had been threatened and executed and their property confiscated. They were allegedly discriminated against in schools and in the workplace. The Committee therefore wished to know whether the Baha'i community constituted a threat to the authorities and whether specific charges had been brought against its members.

36. Mr. WENNERGREN, referring to the right to a fair trial, observed that in his 1993 report on the human rights situation in the Islamic Republic of Iran (E/CN.4/1993/41), the Special Representative of the Commission on Human Rights had noted among other things that instead of open trials, trials in camera tended to be the rule, that criminal trials were held without guarantees of due process of law as established by the relevant international instruments, and that the lack of an independent bar association had adverse effects on the administration of justice. From the point of view of the Covenant those were serious allegations, which had been corroborated by other human rights organizations such as Amnesty International and the Lawyer's Committee for Human Rights, and he would be very interested in hearing Mr. Mehrpour's comments on them. He wondered how such a situation could exist, especially since the second periodic report indicated that all those guarantees should be provided for.

37. Turning to paragraph 179 of the report, concerning crimes by minors, he sought clarification as to whether decisions regarding the guilt of a child were taken by a court or some other entity, and whether the father or paternal relatives, who were required to pay compensation for a crime allegedly committed by a child, enjoyed presumption of innocence.

38. Mr. PRADO VALLEJO said that in some of the specific cases to which the representative of the Islamic Republic of Iran had referred, there was a contradiction between Islamic legislation and the Covenant. Under article 2 of the Covenant, the first duty of a State party was to harmonize its internal legislation with the provisions of that instrument.

39. According to information in the possession of the Committee, there had been some summary trials and executions; prisoners had been executed for political and religious reasons; those executed for the latter reason included members of the Baha'i community. The situation of that community was of great concern to the Committee because its members were apparently still being discriminated against and lacked sufficient guarantees for the exercise of their religion. There were also reports of prisoners of conscience. He wondered whether the delegation would care to express its views on those matters.

40. Concerning paragraph 153 of the periodic report, he would like to know what was considered to be a political crime, who defined political crimes and what the difference was between a political crime and a common crime. With regard to paragraph 153 (a), he wondered whether the delegation could explain under what

(Mr. Prado Vallejo)

circumstances and for what purpose both parties to a trial could request that it not be held openly.

41. He was also seriously concerned about the cruel physical punishment of dismemberment meted out in certain cases. The delegation had said that the situation was under review; he hoped that that inhuman form of punishment would be abandoned. The Committee would also greatly appreciate it if more information could be provided about appeals, especially in cases where a crimewas punishable by death. Although the report did indicate that the legislation provided for appeals, it would seem that in practice appeals could not always be lodged. Additional information would likewise be welcome concerning the allegation that political detainees about to be released were forced to sign statements that they had repented and would not oppose the Government again.

42. Concerning paragraph 154 of the second periodic report, the Committee would like to know more about who appointed the members of the Revolutionary Courts and how the independence of those courts was guaranteed in order to ensure that their decisions would not be biased. With regard to paragraph 154 (d) the Committee would also appreciate more information as to who the "elements in previous regimes" were and how they had been dealt with, what crimes against the Iranian people were and how they could be characterized.

43. Mr. DIMITRIJEVIĆ welcomed the willingness of the Islamic Republic of Iran to reconsider fully all the factors and influences that affected the implementation of the Covenant. He was sure that ways would be found to harmonize the duties and obligations under the Covenant with the traditions of that country.

44. With regard to article 10 of the Covenant, Mr. Mehrpour's reply to the question concerning the private participation of the victim's family in prosecution for premeditated murder showed that the main motivation for criminal proceedings in such cases still seemed to be vengeance. If the same logic were applied to imprisonment, the result would be that people would be sent to prison only to suffer and not to be reformed. Under the Covenant, the main reason for imprisonment was social rehabilitation, which could be achieved in many ways, and he therefore wished to be assured that the Government was reconsidering the purpose of the treatment of prisoners.

45. If appeals were to be safeguarded, according to article 14 of the Covenant, some preconditions had to be met: the grounds upon which appeals could be based must be specified; clear instructions must be given as to where the appeal should be lodged; a time-limit should be set for consideration of appeals; and clear reasoning must be given for the decision on the appeal.

46. Concerning paragraph 35 of the report of the Special Representative, he would welcome clarification as to exactly what the grounds for sentencing Mr. Samandari had been. Since there was no clear indication as to what a capital offence was, the Committee could deduce from that example that a person could be sentenced to death for a cumulation of crimes. He did not see how an appeal could be lodged if the condemned person did not know the grounds upon which his sentence had been based. The problem was compounded by one of legal aid, for it seemed that in the Islamic Republic of Iran anybody could act as

(Mr. Dimitrijević)

counsel. The Committee would therefore appreciate it if the delegation could explain how a typical appeal could be lodged and what the procedure was in criminal cases, particularly capital cases.

47. MR. MAVROMMATIS said it would be helpful if the delegation could provide more succinct replies to members' questions. He had found it difficult to follow the earlier rather elaborate replies concerning drug-trafficking and the Salman Rushdie case. Nevertheless, he welcomed the new willingness on the part of the delegation to examine the country's laws and practices in the light of the provisions of the Covenant.

48. The impression gained from reading the second periodic report was that the country was plagued by obsolete and archaic laws and procedures. It needed to recognize, for example, that the imposition of punishment was no longer considered as a means of exacting retribution, or even as a deterrent. He was also surprised that the Revolutionary Courts should still be in existence 15 years after the success of the Revolution. Special courts of any kind should be established only as a temporary exceptional measure and with proper justification. Given the jurisdiction of the Revolutionary Courts, he felt that great caution needed to be exercised in their use. Like Mr. Prado Vallejo, he was concerned that such courts were empowered to investigate "certain elements in previous regimes" (CCPR/C/28/Add.15, para. 154 (d)). Surely that was a discriminatory measure. He failed to see why the cases concerned could not be dealt with by the ordinary courts.

49. He shared the concerns expressed by Mrs. Higgins and several other members concerning the situation of the Baha'is and hoped that the delegation would provide specific information on the individual cases raised. Indeed, there had been so many reports of human rights violations against Baha'is that the country was duty-bound to investigate the situation. It also had a duty to accept the Baha'is and to consider taking measures for their protection.

50. The restrictions on the appeals procedure were inconsistent with the provisions of the Covenant and the question needed to be given serious consideration. The Committee's general remark on article 14 of the Covenant might prove useful to the Government in its efforts to bring criminal law and procedure into line with the provisions of the Covenant. The independence of the judiciary could be secured through a number of measures, including security of tenure, immunity from criminal and civil process, and ensuring that the recruitment, appointment and transfer of judges were carried out in accordance with the law.

51. Mr. MEHRPOUR (Islamic Republic of Iran), replying to questions concerning the lack of access to lawyers, said that his country's laws and practices on the matter were very clear: in all courts, including military courts, all dependants had the right to a lawyer. Inevitably, there were situations in which violations of that right occurred, but they were dealt with in an appropriate manner and many efforts had been made to improve the situation in recent years.

52. On the question of the right of appeal, he said that all decisions of all courts were subject to appeal. The procedures for bringing an appeal were specified by law and there were no restrictions.

(Mr. Mehrpour, Islamic Republic of Iran)

53. Many Committee members had inquired about the proliferation of different kinds of courts in Iran. The Legal Courts dealt mainly with civil claims and cases might be referred to Court 1 or Court 2 depending on the seriousness of the offence. The Special Civil Courts dealt with private matters, such as divorce, marriage or alimony settlements. The Military Courts dealt only with crimes committed during the performance of military duties or violations of military laws. Their decisions were subject to appeal.

54. On the question of the training of judges, he observed that there were three law schools in Teheran which were open to both male and female students. All aspects of civil and criminal law and procedure as well as commercial law were studied over a period of four years. It was true that the emphasis was placed on Islamic law, but international law was also taught. Most of those who became judges possessed doctoral degrees in law. In addition, many women were currently practising law and many were employed in government departments. There were plans to begin admitting women to the judicial colleges in 1994. Students at those colleges were considered to be employees of the judicial system and had to undertake to serve as judges on completion of their studies.

55. Turning to the question of judgements issued on the basis of fatawa, he said that judges only issued such judgements when the case in question was not covered by codified law. If a legal issue needed to be resolved and no relevant legal provisions existed, the function of a judge was to interpret the law case by case and make use of precedents in order to reach a decision. Surely that procedure was common to all countries. In the event of conflict between a fatawa and the civil law, the civil law always took precedence.

56. There was currently no definition of political offences and no law had been passed to implement or explain article 168 of the Constitution. The question was currently under review.

57. Many members of the Committee had raised the question of secret trials. Under article 165 of the Constitution, all trials had to be held openly, unless the court determined that an open trial would be detrimental to the morals of public order. He felt sure that the situation was no different from that in other countries, where courts frequently sat in private session if exceptional circumstances so required. Article 165 also stipulated that, in private disputes, the parties could request that the trial should not be held openly. Such cases usually involved family disputes, where the parties did not want the issues heard in public. However, the right to a fair trial was in no way prejudiced.

58. While his delegation was aware that violations of proper procedures did inevitably occur, it felt that many of the reports concerning those cases were not properly documented and relied on unsubstantiated allegations. Unfortunately, he did not have the information available to give detailed replies to many of the individual cases raised.

59. The CHAIRMAN said that, because of the lack of time, the Committee would have to defer further consideration of the second periodic report of the Islamic Republic of Iran until its next session.

The meeting rose at 6.20 p.m.